Z1
1:1983
suppl.
v.2B
pt.2
c.2

North Carolina State Library

IE GENERAL STATUTES OF NORTH CAROLINA

N. C. Doc.
OCT 31 1983

1983 SUPPLEMENT

Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

Under the Direction of
D. P. HARRIMAN, S. C. WILLARD, W. L. JACKSON AND K. S. MAWYER

Volume 2B, Part II

1982 Replacement

Annotated through 303 S.E.2d 102. For complete scope of annotations, see scope of volume page.

Place in Pocket of Corresponding Volume of Main Set.

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA
1983

Copyright © 1982, 1983
by
The Michie Company

All rights reserved.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted by the General Assembly through the 1983 Regular Session and the 1983 Extra Session affecting Chapters 58 through 62 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

South Eastern Reporter 2nd Series through Volume 303, p. 102.
Federal Reporter 2nd Series through Volume 707, p. 523.
Bankruptcy Reports through Volume 29, p. 815.
Federal Supplement through Volume 562, p. 911.
Federal Rules Decisions through Volume 97, p. 544.
Supreme Court Reporter through Volume 103, p. 2468.
North Carolina Law Review through Volume 61, p. 744.
Wake Forest Law Review through Volume 19, p. 150.
Campbell Law Review through Volume 5, p. 262.
Duke Law Journal through 1983, p. 195.
North Carolina Central Law Journal through Volume 13, p. 282.
Opinions of the Attorney General.

Preface

This Supplement to Replacement Volume 2B, Part II contains the general laws of a permanent nature enacted by the General Assembly since publication of the replacement volume through the 1983 Regular Session and the 1983 Extra Session which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

The General Statutes of North Carolina

1983 Supplement

VOLUME 2B, Part II

Chapter 58.

Insurance.

SUBCHAPTER I. INSURANCE DEPARTMENT.

Article 2.

Commissioner of Insurance.

Sec.

58-6. Salary of Commissioner of Insurance.

58-21.2. Reporting of product liability experience.

Article 3.

General Regulations for Insurance.

58-30.4. Revised classifications and rates; safe driver insurance plan.

58-30.5. Major and minor chargeable accidents and certain speeding traffic violations under the Safe Driver Insurance Plan.

58-40. Agents and others must procure license.

58-41.1. Examinations for license.

58-41.2. Limited licenses.

58-43. Nonresident agents forbidden; exception.

58-44.6. [Repealed.]

Article 3A.

Unfair Trade Practices.

58-54.4. Unfair methods of competition and unfair or deceptive acts or practices defined.

Article 5.

License Fees and Taxes.

58-63. Schedule of fees and charges.

SUBCHAPTER II. INSURANCE COMPANIES.

Article 6.

General Domestic Companies.

58-77. Amount of capital and/or surplus required; impairment of capital or surplus.

Sec.

58-79. Investments; life.

Article 8.

Mutual Insurance Companies.

58-97. Dividends to policyholders.

Article 12B.

North Carolina Rate Bureau.

58-124.17. North Carolina Rate Bureau created.

58-124.23. Deviations.

58-124.26. [Expired.]

58-124.30. Payment of dividends not prohibited or regulated; plan for payment into rating system.

SUBCHAPTER III. FIRE INSURANCE.

Article 18B.

Fire Access to Insurance Requirements.

58-173.27. Termination; outstanding obligations; revival and extension.

Article 18C.

North Carolina Health Care Liability Reinsurance Exchange.

58-173.34 to 58-173.51. [Repealed.]

Article 21.

Insuring State Property, Officials and Employees.

58-191. Payment of losses; rules and regulations; sprinkler leakage insurance.

58-191.4. Transfer from fund for local fire protection.

58-194.1. Liability insurance required for state-owned vehicles.

SUBCHAPTER IV. LIFE INSURANCE.

Article 22.

General Regulations of Business.

Sec.

58-205.3. Interest payments on death benefits.

Article 24A.

Mutual Burial Associations.

58-241.6. Mutual burial associations placed under supervision of Burial Association Commission; Commission to select Burial Association Administrator.

58-241.11. Assessments against association for expenses of Burial Association Administrator.

58-241.34. Authority of foreign or domestic mutual burial association or domestic or foreign insurance company to purchase, merge or consolidate with North Carolina mutual burial associations.

SUBCHAPTER V. AUTOMOBILE INSURANCE.

Article 25A.

North Carolina Motor Vehicle Reinsurance Facility.

58-248.27. North Carolina Motor Vehicle Reinsurance Facility; creation; membership.

58-248.33. The Facility; functions; administration.

SUBCHAPTER VI. ACCIDENT AND HEALTH INSURANCE.

Article 26C.

Group Health Insurance Continuation and Conversion Privileges.

Part 1. Continuation.

58-254.42. Termination of continuation.

Part 2. Conversion.

58-254.45. Restrictions.

58-254.47. Premium.

58-254.57. Other conversion provisions.

SUBCHAPTER IX. READABLE INSURANCE POLICIES.

Article 33.

Readable Insurance Policies.

58-366. Scope of application.

58-371. Application to policies; dates; duties of the Commissioner.

SUBCHAPTER I. INSURANCE DEPARTMENT.

ARTICLE 1.

Title and Definitions.

§ 58-1. Title of the Chapter.

CASE NOTES

Cited in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

ARTICLE 2.

Commissioner of Insurance.

§ 58-6. Salary of Commissioner of Insurance.

The salary of the Commissioner of Insurance shall be set by the General Assembly in the Budget Appropriation Act. (1899, c. 54, ss. 3, 8; 1901, c. 710; 1903, c. 42; c. 771, s. 3; Rev., s. 2756; 1907, c. 830, s. 10; c. 994; 1909, c. 839; 1913, c. 194; 1915, cc. 158, 171; 1917, c. 70; 1919, c. 247, s. 4; C.S., s. 3874; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 342; 1945, c. 383; 1947, c. 1041;

1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 6; 1967, c. 1130; c. 1237, s. 6; 1969, c. 1214, s. 6; 1971, c. 912, s. 6; 1973, c. 778, s. 6; 1975, 2nd Sess., c. 983, s. 21; 1977, c. 802, s. 42.12; 1983, c. 761, s. 206.)

Editor's Note. — Session Laws 1983, c. 761, s. 259, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, deleted "the same as for superior court judges as" following "shall be."

§ 58-7.1. Chief deputy commissioner.

CASE NOTES

For discussion of respective powers and duties of the Commissioner and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 845 (1983).

Cited in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

§ 58-9. Powers and duties of Commissioner.

Legal Periodicals. —

For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-9.2. Examinations, investigations and hearings; notice of hearing.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

CASE NOTES

For discussion of respective powers and duties of the Commissioner and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 845 (1983).

Quoted in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

§ 58-9.3. Court review of orders and decisions.

Legal Periodicals. —

For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

§ 58-9.4. Court review of rates and classification.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

§ 58-9.5. Procedure on appeal under § 58-9.4.

Legal Periodicals. —
For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-9.6. Extent of review under § 58-9.4.

Legal Periodicals. —
For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

CASE NOTES

Unlawful Delegation of Power to Make Final Agency Decision. — Where the Commissioner of Insurance delegated to his appointed hearing officer the power to make the final agency decision, the commissioner made an unlawful delegation of his powers. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

For discussion of respective powers and duties of the Commissioner and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 845 (1983).

Cited in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

§ 58-10. Commissioner to supervise local inspectors.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-16. Examinations to be made.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-16.1. Examination dispensed with under certain circumstances.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-18. Investigation of charges.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-21.2. Reporting of product liability experience.

Every insurer providing product liability insurance or excess insurance above self-insurance to one or more manufacturers, sellers, or distributors in this State shall file with the Commissioner, along with the insurer's annual statement, a report containing the information that is listed on the product liability insurance supplement as promulgated and amended by the National Association of Insurance Commissioners. (1979, c. 979, s. 1; 1983, c. 141.)

Effect of Amendments. — The 1983 amendment, effective Apr. 6, 1983, rewrote this section.

§ 58-27.2. Public hearings on revision of existing schedule or establishment of new schedule; publication of notice.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

ARTICLE 3.

General Regulations for Insurance.

§ 58-28. State law governs insurance contracts.

CASE NOTES

Provision in Policy That Its Terms Are Controlled by State Statute. — Where the policy itself provides that its terms are controlled by a statute of the state wherein the property is located, which conflicts with a policy provision and does not conflict with federal law, the courts may apply state statutory law in appropriate circumstances by virtue of such policy provision, but never merely because it is the law of the forum. Dixie Whse. v. Federal Emergency Mgt. Agency, 547 F. Supp. 81 (M.D.N.C. 1982).

Application of State Law to Federal Flood Insurance Issues. — To determine if state statutory law where the property is located should apply to federal flood insurance issues, three factors must be considered: (1) the terms of the policy; (2) applicable state statutory law; and (3) applicable federal statutory or decisional law. Where no term in the policy addresses an issue in dispute, federal law is applied. If no decisional or statutory federal law exists the federal courts may apply the traditional common-law technique of decision by drawing upon standard insurance law principles. Dixie Whse. v. Federal Emergency Mgt. Agency, 547 F. Supp. 81 (M.D.N.C. 1982).

§ 58-30.4. Revised classifications and rates; safe driver insurance plan.

The North Carolina Rate Bureau shall promulgate a revised basic classification plan and a revised subclassification plan for coverages on private passenger (nonfleet) motor vehicles in this State affected by the provisions of G.S. 58-30.3. Said revised basic classification plan will provide for the following four basic classifications to wit: (i) pleasure use only; (ii) pleasure use except for driving to and from work; (iii) business use; and (iv) farm use. The North Carolina Rate Bureau shall promulgate a revised subclassification plan which

appropriately reflects the statistical driving experience and exposure of insureds in each of the four basic classifications provided for above, except that no subclassification shall be promulgated based, in whole or in part, directly or indirectly, upon the age or sex of the person insured. Such revised subclassification plan may provide for premium surcharges for insureds having less than two years' driving experience as licensed drivers, and shall provide for premium surcharges for drivers having a driving record consisting of a record of a chargeable accident or accidents, or having a driving record consisting of a conviction or convictions for a moving traffic violation or violations, or any combination thereof. The subclassification plan to be effective January 1, 1984, shall provide that in a policy insuring more than one motor vehicle, driving record premium surcharges for chargeable accidents and moving traffic violations shall be distributed equally among the motor vehicles so insured. The classification plans and subclassification plans so promulgated by the Bureau shall be subject to the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts as provided for rates and classification plans in G.S. 58-124.20, 58-124.21, and 58-124.22. (1975, c. 666, s. 1; 1977, c. 828, s. 9; 1979, c. 824, s. 7; 1981, c. 916, s. 3a; 1983, c. 763, ss. 2, 3.)

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, rewrote the next-to-last sentence. The act also amended the section catchline.

CASE NOTES

When a revised classification and rate plan change is filed, the last sentence in this section provides that "the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts" shall be subject to the procedures "as provided for rates and classification plans in §§ 58-124.20, 58-124.21, and 58-124.22." Of these statutes, only § 58-124.21(a) speaks to any duty of the commissioner relevant to the subject. The statute declares that once there has been a filing and once there has been notice given by the commissioner, there must be a hearing. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

§ 58-30.5. Major and minor chargeable accidents and certain speeding traffic violations under the Safe Driver Insurance Plan.

(a) The subclassification plan promulgated pursuant to G.S. 58-30.4 shall provide for separate surcharges for major chargeable accidents and minor chargeable accidents. "Major chargeable accident" means a chargeable accident that results in (a) bodily injury or death or (b) damage in excess of five hundred dollars ($500.00) to any combination of (i) property not owned by the applicant nor by any current resident operator and (ii) his motor vehicle. "Minor chargeable accident" means a chargeable accident that results in damage of five hundred dollars ($500.00) or less to any combination of (i) property not owned by the applicant nor by any current resident operator and (ii) his motor vehicle.

(b) The subclassification plan shall provide that with respect to a conviction for a "violation of speeding 10 miles per hour or less over the speed limit" there shall be no premium surcharge nor any assessment of points unless there is a driving record consisting of a conviction or convictions for a moving traffic violation or violations during the three years immediately preceding the date of application or the preparation of the renewal.

(c) The North Carolina Rate Bureau shall promulgate a revised subclassification plan to reflect the provisions of this section. Such plan shall be subject to the filing, hearing, disapproval, review, and appeal procedures before the Commissioner and the courts as provided for rates and classification plans in G.S. 58-124.20, 58-124.21, and 58-124.22. The Bureau shall make a filing no later than September 1, 1983, and such plan so promulgated shall become effective January 1, 1984. Such plan shall apply only to chargeable accidents and violations of speeding 10 miles per hour or less over the speed limit that occur on or after January 1, 1984. With respect to any chargeable accidents or violations of speeding 10 miles per hour or less over the speed limit occurring prior to January 1, 1984, the surcharge and period for which such surcharge is applied and collected shall be determined by the subclassification plan in effect at the time such chargeable accident or violation of speeding 10 miles per hour or less over the speed limit occurs.

(d) For the purposes of subsections (b) and (c) of this section, a "violation of speeding 10 miles per hour or less over the speed limit" does not include the offense of speeding in a school zone in excess of the posted school zone speed limit.

(e) Any adjustments in rates for nonfleet passenger motor vehicle insurance to offset any reduction in premium level due to the implementation of the provisions of this section shall be made through adjustments to the base rates for the affected coverages. Such adjustments shall be filed by the Bureau with the Commissioner in accordance with the standards and procedures of Articles 12B and 25A of this Chapter. In no event shall such adjustments be deemed to be changes in the total combined general rate level within the meaning of G.S. 58-124.26. (1983, c. 763, s. 1.)

Editor's Note. — Session Laws 1983, c. 763, s. 4, makes this section effective upon ratification. The act was ratified July 15, 1983.

§ 58-31.1. Proof of loss forms required to be furnished.

CASE NOTES

Section places burden upon insurer to provide proof of loss form to insured. If the insurer fails to do so, the insured need only provide written proof of the occurrence, character and extent of loss. Dixie Whse. v. Federal Emergency Mgt. Agency, 547 F. Supp. 81 (M.D.N.C. 1982).

No Conflict with Federal Rule of Substantial Compliance. — There is no conflict between the federal rule of substantial compliance and the North Carolina rule requiring proof of occurrence, character and extent of loss. In order to substantially comply the proof must at least supply enough information to satisfy the reason behind the rule. Proof of loss supplies evidence of the particulars of the occurrence and enables the insurer to determine its liability and the amount thereof. Both the federal authority and state statute promote this general policy. Dixie Whse. v. Federal Emergency Mgt. Agency, 547 F. Supp. 81 (M.D.N.C. 1982).

No Conflict with Federal Insurance Programs. — Federal case authority most closely addressing the issue of sufficiency of proof of loss under a federal insurance program does not conflict with this section. Dixie Whse. v. Federal Emergency Mgt. Agency, 547 F. Supp. 81 (M.D.N.C. 1982).

§ 58-40. Agents and others must procure license.

(a) Every agent of any insurance company authorized to do business in this State shall be required to obtain annually from the Commissioner of Insurance a license under the seal of his office, showing that the company for which he is agent is licensed to do business in this State and that he has been appointed an agent of such company as defined in G.S. 58-39.4 and is duly authorized to act for such company within the scope of the agency designated on such license. Provided, however, any life insurance agent duly licensed for a life insurer authorized to transact business in this State may transact business for any subsidiaries or affiliates of said life insurer that are duly licensed in this State to transact the business of life insurance without securing additional licenses, provided a certified copy of a resolution adopted by the board of directors of each of the life insurers requesting such authority is filed with the Commissioner by each of the life insurers and renewed and refiled whenever deemed necessary by the Commissioner and upon the payment of any fee otherwise required as if a license had been issued. The resolution shall also designate the primary insurer for which all of the company's life insurance agents must be licensed pursuant to this section, and said license must be in full force and effect in order to transact business for any of the affiliated or subsidiary life insurers. While acting as a life insurance agent for any of the affiliated or subsidiary insurers such life insurance agent and such affiliated or subsidiary insurer shall have all the duties, responsibilities, and legal requirements that apply to life insurance agents generally under this Chapter and the common law.

(1899, c. 54, s. 81; 1901, c. 391, s. 7; 1903, c. 438, s. 8; c. 774; Rev., s. 4706; 1915, c. 109, s. 7; c. 166, s. 1; C.S., s. 6298; 1951, c. 105, s. 1; 1953, c. 1043, s. 2; 1971, c. 757, s. 3; 1983, c. 662.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective Jan. 1, 1984, added the language beginning "Provided, however, any life insurance agent duly licensed" at the end of the first sentence and added the last two sentences of subsection (a).

§ 58-41.1. Examinations for license.

(a) Each applicant for license as agent, general agent or adjuster shall, prior to the issuance of any such license, personally take and pass to the satisfaction of the Commissioner an examination in writing given by the Commissioner as a test of his qualifications and competence; but this requirement shall not apply to:

(1) Applicants for license under G.S. 58-41.2 and as agents for companies or associations specified in G.S. 58-124.28;

(2) Applicants who have, within the three-year period next preceding the date of application, not including time spent in military service of the United States during war, been licensed in this State in the same capacity and to engage in the same kinds of insurance for which they were previously licensed;

(3) Applicants for an agent's, general agent's or adjuster's license covering the same kinds of insurance as authorized by the license then held by them except as provided in subsection (b) of this section;

(4) Applicants for license to write ocean marine insurance whenever the Commissioner deems the applicant to be qualified by past experience to deal in such insurance;

(5) Applicants (who are bona fide residents and actually residing in this State) for an agent's, general agent's, or adjuster's license covering the

same kinds of insurance as authorized by the license or certificate granted him upon the successful passing of a written examination given by the insurance department of another state, or by the American College of Life Underwriters, Life Underwriters Training Council, American Institute of Property and Liability Underwriters, Institute of Insurance of America, or any insurance institute conducted at a recognized college or university in the State of North Carolina and meeting the standards as approved by the Commissioner of Insurance;

(6) Applicants for license as credit life insurance agents, credit accident and health insurance agents and credit insurance agents as defined in subdivision (17) of G.S. 58-72.

(1947, c. 922; 1949, c. 958, s. 1; 1951, c. 105, s. 1; 1953, c. 1043, s. 6; 1969, c. 1206; 1971, c. 926, s. 2; 1979, 2nd Sess., c. 1320, ss. 1, 2; 1983, c. 802, s. 4.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 18, 1983, substituted "G.S. 58-124.28" for "G.S. 58-131.9" in subdivision (1) of subsection (a).

§ 58-41.2. Limited licenses.

(a) The Commissioner shall issue limited licenses to persons requesting to be licensed:

(1) As agents for any type of insurance to persons who continue to represent an insurance company solely for the purpose of servicing unexpired contracts of insurance.

(2) As travel insurance agents to employees of common carriers of persons or to individuals or employees of persons engaged in selling transportation on such common carriers.

(3) As Motor Club Membership Sales Agents to persons or firms engaged in the sales of Memberships for Motor Clubs licensed under Article 9B of Chapter 66 of the General Statutes.

(c) Motor Club Membership Sales Agents shall be restricted to the sale of only such insurance as may be included in the Motor Club Membership unless they are also otherwise licensed as insurance agents under this Chapter. (1947, c. 922; 1953, c. 1043, s. 7; 1983, c. 802, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 18, 1983, added subdivision (3) of subsection (a) and added subsection (c).

§ 58-43. Nonresident agents forbidden; exception.

No nonresident of the State shall be licensed as an agent to do business in the State except as a special agent or organizer, and except as an agent licensed to sell life insurance and annuities only, and then only when he reports his business as North Carolina business to some general or district agent of his company in the State, or having territory within the State. No such nonresident shall be licensed to represent a life insurance company in this State unless he is licensed in his home state and meets the licensing requirements of this Chapter; Provided, that the provisions of this sentence apply to the extent that the laws or regulations of the nonresident's home state make similar provisions for residents of North Carolina. (1899, c. 54, s. 108; 1903, c. 438, s. 11; Rev., s. 4707; C.S., s. 6301; 1945, c. 458; 1947, c. 922; 1955, c. 850, s. 2; 1983, c. 689, ss. 1, 2.)

Effect of Amendments. — The 1983 amendment, effective July 6, 1983, deleted "to represent the same company" following "unless he is licensed" in the second sentence and added the proviso at the end of that sentence.

§ 58-44.6: Repealed by Session Laws 1983, c. 416, s. 1, effective June 2, 1983.

§ 58-53.3. Tax deducted from premium; reports filed.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

SUBCHAPTER II. INSURANCE COMPANIES.

ARTICLE 3A.

Unfair Trade Practices.

§ 58-54.1. Declaration of purpose.

Applied in Sharpe v. Nationwide Mut. Fire Ins. Co., — N.C. App. —, 302 S.E.2d 893 (1983).

§ 58-54.4. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(12) Misuse of borrowers' confidential information. Soliciting, accepting, or using any information from a lender concerning policies of insurance held by such lender as a mortgagee of real property, except from a lender who is an insurer where the loan has been made by or sold or held for sale to such insurer. Provided, however, this subdivision shall not apply to the use of such information by a lender for the solicitation of life or accident and health insurance. (1949, c. 1112; 1955, c. 850, s. 3; 1967, c. 935, s. 2; 1975, c. 668; 1983, c. 831.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 19, 1983, added subdivision (12).

ARTICLE 5.

License Fees and Taxes.

§ 58-63. Schedule of fees and charges.

The Commissioner of Insurance shall collect and pay into the State treasury fees and charges as follows:

(1) For filing and examining statement preliminary to admission, twenty dollars ($20.00); for filing and auditing annual statement, ten dollars

($10.00); for filing any other papers required by law, one dollar ($1.00); for each certificate of examination, condition, or qualification of company or association, two dollars ($2.00); for each seal when required, two dollars ($2.00); for filing charter and other papers of a fraternal order, preliminary to admission, twenty-five dollars ($25.00).

(1899, c. 54, ss. 50, 68, 80, 81, 82, 87, 90, 92; 1901, c. 391, s. 7; c. 706, s. 2; 1903, c. 438, ss. 7, 8; c. 536, s. 4; cc. 680, 774; 1905, c. 588, s. 68; Rev., s. 4715; 1913, c. 140, s. 1; 1919, c. 186, s. 6; C.S., s. 6318; 1921, c. 218; 1935, c. 334; 1939, c. 158, s. 208; 1945, c. 386; 1947, c. 721; 1957, cc. 133, 1047; 1959, c. 911; 1963, c. 692; 1977, c. 376, s. 2; c. 802, s. 50; 1983, c. 790, s. 6.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, substituted "two dollars ($2.00)" for "one dollar ($1.00)" following "for each seal when required" in subdivision (1).

Article 6.

General Domestic Companies.

§ 58-77. Amount of capital and/or surplus required; impairment of capital or surplus.

The amount of capital and/or surplus requisite to the formation and organization of companies under the provisions of this Chapter shall be as follows:

(9) Time for Compliance. — Any domestic, foreign or alien company licensed to do business in North Carolina prior to July 1, 1979, shall be permitted to continue to do the same kinds of business which it was authorized to do on such date without being required to increase its capital and/or surplus, provided however, such insurers shall increase the capital and surplus requirements to the amounts set forth in this section G.S. 58-77 on or before July 1, 1985, but the requirements of this section as to capital and surplus shall apply to such companies as a prerequisite to writing additional lines of business, and to such companies as a prerequisite to commencing business if unlicensed prior to July 1, 1979.

(1899, c. 54, s. 26; 1903, c. 438, s. 4; Rev., s. 4729; 1907, c. 1000, s. 5; 1913, c. 140, s. 2; C.S., s. 6332; 1929, c. 284, s. 1; 1945, c. 386; 1947, c. 721; 1963, c. 943; 1965, c. 947; 1967, c. 300; 1971, c. 536; 1973, c. 686; 1979, c. 421, s. 1; 1983, c. 472.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective June 8, 1983, substituted "July 1, 1985" for "July 1, 1983" near the middle of subdivision (9).

§ 58-79. Investments; life.

(a) Investments Specified. — Every domestic stock and mutual life insurance company must have and continually keep to the extent of an amount equal to its entire reserves, as hereinafter defined, an entire capital, if any, and minimum required surplus, invested in:

(1) Coin or currency of the United States of America, on hand or on deposit in a national or state bank or trust company or invested in the shares of any building and loan or savings and loan association, or invested in the shares of any federal savings and loan association.

(2) Interest-bearing bonds, notes, certificates of indebtedness, bills or other direct interest-bearing obligations of the United States of America or of the Dominion of Canada or other interest-bearing obligations fully guaranteed both as to principal and interest by the United States of America, or by the Dominion of Canada.

(3) Interest-bearing bonds of any state, District of Columbia, territory or possession of the United States of America, or of any province of the Dominion of Canada, or of any county, or incorporated city of any state, District of Columbia, territory or possession of the United States of America.

(4) Interest-bearing bonds of any commission, authority or political subdivision having legal authority to issue the same of any state, District of Columbia, territory or possession of the United States of America or of any county or incorporated city of any state, District of Columbia, territory or possession of the United States of America.

(5) Federal farm loan bonds issued by federal land banks organized under the provisions of the act of Congress known as the Federal Farm Loan Act. Any notes, bonds, debentures, or similar type obligations, consolidated or otherwise, issued by any farm credit institution pursuant to authorities contained in the Farm Credit Act of 1971 (Public Law 92-181), as amended. Interest-bearing bonds, notes or other interest-bearing obligations of any solvent corporation organized under the laws of the United States of America or of the Dominion of Canada, or under the laws of any state, District of Columbia, territory or possession of the United States of America, or obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development, Asian Development Bank and Inter-American Development Bank. Equipment trust obligations or certificates or other secured instruments evidencing an interest in (i) transportation equipment; and (ii) industrial and utility equipment and related buildings and other construction whether or not affixed to land, and related leases, easements, uses, rights-of-way and any other appurtenances thereto; all of which items listed in parts (i) and (ii) of this sentence are and will be wholly or in part within the United States of America and a right to receive determined portions of rental, purchases or other fixed obligatory payments for the use or purchase of such items.

(6) Dividend-paying stocks or shares of any corporation created or existing under the laws of the United States of America or of any state, District of Columbia, territory or possession of the United States of America; notwithstanding any provisions in this section to the contrary no company may invest more than twenty percent (20%) of its total admitted assets in common stocks; and further provided, that no company may invest more than three percent (3%) of its admitted assets in the stock or shares of any one corporation, and provided further, except as the Commissioner shall permit, that such investment in any one corporation not engaged solely in the business of insurance shall not result in the acquisition of more than twenty percent (20%) of the outstanding voting stock or shares of such corporation. The restrictions in this section do not apply to shares of building and loan or savings and loan associations or federal savings and loan associations.

(7) Loans secured by first mortgages, or deeds of trust, on unencumbered fee simple or improved leasehold real estate in the District of Columbia or in any state, territory or possession of the United States of America, to an amount not exceeding seventy-five percent (75%) of the fair market value of such fee simple or improved leasehold real

estate; provided that such loans may exceed seventy-five percent (75%) of the fair market value of such fee simple or improved leasehold real estate to the extent that an admitted mortgage guaranty insurer, as defined in G.S. 58-72(17), has insured or guaranteed or made a commitment to insure or guarantee the amount by which such loan is in excess of seventy-five percent (75%) of the fair market value; provided, further, that, in no event shall any such loan exceed ninety-five percent (95%) of the fair market value of the property. No loan may be made on leasehold real estate unless the lease has at least 30 years to run before its termination and the loan matures at least 20 years before expiration of the lease. Whenever such loans are made upon fee simple, or improved leasehold real estate which is improved by a building or buildings, the said improvements shall be insured against loss by fire, and the fire insurance policies shall contain a standard mortgage clause and shall be delivered to the mortgagee as additional security for the said loan.

Loans secured by first mortgages which the Federal Housing Administrator has insured or has made a commitment to insure, or invested in mortgage notes or bonds so insured, and neither the limitations of this section nor any other law of this State requiring security upon which loans shall be made, or prescribing the nature, amount or forms of such security, or limiting the interest rates upon loans, shall be deemed to apply to such insured mortgage loans.

Loans secured by first mortgages, or deeds of trust, on unencumbered fee simple real estate in connection with which the Veterans Administration of the United States has guaranteed, or has made a commitment to guarantee, a portion of the loan pursuant to the Servicemen's Readjustment Act of 1944, and amendments thereto, provided the amount of any such loan, less the portion thereof guaranteed by said Veterans Administration, shall not exceed seventy-five percent (75%) of the fair market value of such real estate.

In all investments made upon mortgages, the evidence of the debt, if any, shall accompany the mortgage or deed of trust.

(8) Ground rents in the District of Columbia or any state of the United States of America, provided, that in the case of unexpired redeemable ground rents the premiums paid, if any, shall be amortized over the period between date of acquisition and earliest redemption date or charged off at any time prior to redemption date; and in the case of expired redeemable ground rents the premium paid, if any, shall be charged off at the time of acquisition. Redeemable ground rents purchased at a discount shall be carried at an amount not greater than the cost of acquisition.

(9) Collateral loans secured by pledge of any security named in subdivisions (1), (2), (3), (4), (5), (6), (7) and (8) of this subsection; provided that the current market value of such pledged securities shall be at all times during the continuance of such loans at least twenty-five percent (25%) more than the unpaid balance of the amount loaned on them.

(10) Loans upon the policies of the company; provided that the total indebtedness against any policy shall not be greater than the loan value of such policy.

(11) No domestic company may directly or indirectly acquire or hold real property except as follows:

a. Such land and buildings thereon in which it has its principal office and such real estate as shall be requisite for the convenient transaction of its own business; the amount invested in such real property shall not exceed ten per centum (10%) of the investing

company's admitted assets, but the Commissioner may grant permission to the company to invest in real property for such purpose in such increased amount as he may deem proper upon a hearing held before him.

b. Property mortgaged to it in good faith as security for loans previously contracted for money due.

c. Property conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts.

d. Additional real property and equipment incident to real property, if necessary or convenient for the purpose of enhancing the sale value of real property previously acquired or held by it under paragraphs b and c of this subdivision and subject to the prior written approval of the Commissioner.

e. 1. Real estate acquired for the purpose of leasing the same to any person, firm, or corporation, or real estate already leased under the following conditions:

I. A. Where there has already been erected on said property a building or other improvements satisfactory to the purchaser, or

B. Where the lessee shall at its own cost erect thereon, free of liens, a building or other improvements satisfactory to the lessor, or

C. Where the lessor under the terms and conditions of a lease executed and entered into simultaneously with the purchase of the property agrees to erect a building or other improvements on said property;

II. That the said improvements shall remain on the said property during the period of the lease, and in cases where the said improvements are put upon said property at the cost of the lessee the said improvements at the termination of the lease shall vest, free of liens, in the owner of the real estate;

III. That during the term of the lease the tenant shall keep and maintain the said improvements in good repair. Real estate acquired pursuant to the provisions of this subparagraph (a)(11)e1 shall not be treated as an admitted asset unless and until the improvements herein required shall have been constructed and the lease agreement entered into in accordance with the terms of this subparagraph, nor shall real estate acquired pursuant to this subparagraph (a)(11)e1 be treated as an admitted asset in an amount exceeding the amount actually invested reduced each year by at least two percent (2%) of the investment allocable to the improvements on such real estate. The total investments of any company under this subparagraph (a)(11)e1 shall not exceed ten percent (10%) of its assets, nor more than fifty percent (50%) of its capital and surplus whichever is less.

2. Subject to approval of the Commissioner, real estate for recreation, hospitalization, convalescent and retirement purposes of its employees. Such investment under this subparagraph (a)(11)e2 shall not exceed five percent (5%) of the company's surplus.

3. Subject to the approval of the Commissioner, real estate for public or private housing developments. Such investment under this subparagraph (a)(11)e3 shall be subject to and not

exceed the limitation provided for in the last sentence of subparagraph (a)(11)e1 III hereof.

4. No investment shall be made by any company pursuant to this paragraph e which will cause such company's investment in all real property owned or held by it directly or indirectly to exceed fifteen percent (15%) of its assets.

f. It is unlawful for any such incorporated company to purchase or hold real estate in any other case or for any other purpose; provided, however, notwithstanding any express or implied prohibitions, and in addition to other investments permitted by this section, any incorporated company may invest up to six percent (6%) of its assets in real estate for the production of income. Real estate acquired under paragraph (a)(11)a and subparagraph (a)(11)e2 of this section which has ceased to be used or to be necessary for the purposes stated therein shall be sold within five years thereafter, unless the company procures a certificate from the Commissioner that the interest of the company will materially suffer by a forced sale of such real estate in which event the time for the sale may be extended to such a time as the Commissioner may direct in the certificate. Any real estate acquired under paragraphs b, c, and d of this subdivision (11) shall be sold within five years after the company has acquired title thereto; provided, that the Commissioner may in his discretion extend the five-year period as provided hereinabove. Any real estate acquired under subparagraph (a)(11)e1 of this section shall within five years after the termination or expiration of such lease be sold or released for an additional term pursuant to the provisions of subparagraph (a)(11)e1; provided, that the Commissioner may in his discretion extend the five-year period as provided hereinabove. Nothing contained herein prevents any insurance company from improving or conveying its real estate, notwithstanding the lapse of five years without having procured such certificate from the Commissioner.

(12) Electronic computer or data processing apparatus, including software, and related equipment constituting a data processing, recordkeeping, or accounting system or systems if the cost of such system or systems is at least twenty-five thousand dollars ($25,000), but not more than two percent (2%) of its admitted assets, which cost shall be amortized in full over a period not to exceed 10 calendar years.

(13) Interest, rents or other fixed income due and accrued on any of the investments named in subdivisions (1), (2), (3), (4), (5), (7), (8), (9), (10) and (11) of this subsection pursuant to regulations promulgated by the Commissioner.

(14) Notwithstanding any expressed or implied prohibitions, a company may, after the date of the enactment of this subdivision, invest in investments which do not otherwise qualify under any other provision of this subsection; provided, however, that the investments authorized by this subdivision shall not exceed the lesser of (i) five percent (5%) of its admitted assets or (ii) the amount by which total admitted assets exceed total liabilities (except capital) plus six hundred thousand dollars ($600,000) as shown on its last annual statement preceding the date of the acquisition of such investment as filed with the Commissioner of Insurance.

(15) To the extent necessary to satisfy the investment requirements as to reserves and entire capital, if any, and minimum required surplus, no company shall make any investment in or loan on any of the securities mentioned in this section, which are in default as to principal or

interest or as to which the dividend on the last preceding dividend date has been passed.

(16) Notwithstanding any expressed or implied prohibitions, a company may effect or maintain bona fide hedging transactions pertaining to securities otherwise eligible for investment under this section, including, but not limited to, (i) financial futures contracts, warrants, options, calls and other rights to purchase; and (ii) puts and other rights to require another person to purchase such securities. Such contracts, options, calls, puts and rights shall be traded on a securities exchange or board of trade regulated under the laws of the United States. For purposes of this section, a "bona fide hedging transaction" means a purchase or sale of such contract, warrant, option, call, put or right, as the case may be, entered into for the purpose of offsetting changes in the market value of a security held by the company.

(1899, c. 54, s. 27; Rev., s. 4731; 1907, cc. 798, 998; 1911, c. 32; 1913, c. 200; C.S., s. 6334; 1923, c. 73; 1925, c. 187; 1945, c. 386; 1947, c. 721; 1951, c. 284; c. 781, s. 8; 1955, c. 178, s. 1; 1959, c. 286; 1961, cc. 263, 378; 1967, c. 842; 1969, c. 1199; 1971, c. 386, s. 1; 1973, c. 239, s. 5; 1979, c. 777; 1981, c. 306; c. 760, ss. 1-5; 1983, cc. 661, 664.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The first 1983 amendment, effective July 1, 1983, substituted "Electronic computer or data processing apparatus, including software, and related equipment constituting a data processing, recordkeeping, or accounting system or systems" for "Electronic and mechanical machines constituting a data processing and accounting system" and inserted "or systems" following "cost of such system" in subdivision (a)(12).

The second 1983 amendment, effective July 1, 1983, added subdivision (a)(16).

Article 8.

Mutual Insurance Companies.

§ 58-97. Dividends to policyholders.

(a) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes other than life insurance or workers' compensation insurance and employers' liability insurance in connection therewith, may declare and pay a dividend to policyholders from its surplus, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period, upon the basis of each general kind of insurance covered by such policies and by territorial divisions of the location of risks by states, except that in fixing the amount of dividends to be paid on each general kind of insurance, which dividends shall be uniform in rate and applicable to the majority of risks within such general kind of insurance, exceptions may be made as to any class or classes of risk and a different rate or amount of dividends paid on such class or classes if the conditions applicable to such class or classes differ substantially from the condition applicable to the kind of insurance as a whole. Every such company shall have an equal rate of dividend for the same term on all policies insuring risks in the same classification. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment thereof be executed. Neither the payment of dividends nor the rate thereof may be guaranteed by any company, or its agent,

prior to the declaration of the dividend by the board of directors of such company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks.

(b) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes workers' compensation insurance and employers' liability insurance in connection therewith may declare and pay a dividend to policyholders from its surplus, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment thereof be executed. Neither the payment of dividends nor the rate thereof may be guaranteed by any company, or its agent, prior to the declaration of the dividend by the board of directors of such company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau, or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks. (1899, c. 54, s. 35; Rev., s. 4741; C.S., s. 6351; 1935, c. 89; 1945, c. 386; 1947, c. 721; 1955, c. 645; 1983, c. 374, ss. 2, 3.)

Effect of Amendments. — The 1983 amendment, effective May 23, 1983, designated the existing provisions as subsection (a), in the first sentence of subsection (a) substituted "stock or mutual or foreign or domestic, that writes other than life insurance or workers' compensation insurance and employers' liability insurance in connection therewith" for "stock or mutual, other than life," and added subsection (b).

Article 12B.

North Carolina Rate Bureau.

§ 58-124.17. North Carolina Rate Bureau created.

There is hereby created a Bureau to be known as the "North Carolina Rate Bureau," with the following objects and functions:

(1) To assume the functions formerly performed by the North Carolina Fire Insurance Rating Bureau, the North Carolina Automobile Rate Administrative Office, and the Compensation Rating and Inspection Bureau of North Carolina, with regard to the promulgation of rates, for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof and valuable interest therein and other insurance coverages written in connection with the sale of such property insurance; for theft of and physical damage to private passenger (nonfleet) motor vehicles as the same are defined under Article 13C of this Chapter; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and for workers' compensation and employers' liability insurance written in connection therewith except for insurance excluded from the Bureau's jurisdiction in G.S. 58-124.17(3).

(1977, c. 828, s. 6; 1981, c. 888, ss. 1-3; 1983, c. 416, s. 5.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1983 amendment, effective June 2, 1983, substituted "North Carolina Fire Insurance Rating Bureau" for "North Carolina Rating Bureau" near the beginning of subdivision (1).

Legal Periodicals. —

For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

§ 58-124.18. Membership as a prerequisite for writing insurance; governing committee; rules and regulations; expenses.

Legal Periodicals. — For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

§ 58-124.19. Method of rate making; factors considered.

Legal Periodicals. —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

§ 58-124.20. Filing rates, plans with Commissioner; public inspection of filings.

CASE NOTES

When a revised classification and rate plan change is filed, the last sentence in § 58-30.4 provides that "the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts" shall be subject to the procedures "as provided for rates and classification plans in §§ 58-124.20, 58-124.21, and 58-124.22." Of these statutes, only § 58-124.21(a) speaks to any duty of the commissioner relevant to the subject. The statute declares that once there has been a filing and once there has been notice given by the commissioner, there must be a hearing. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

§ 58-124.21. Disapproval; hearing, order; adjustment of premium, review of filing.

Legal Periodicals. —

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

CASE NOTES

Unlawful Delegation of Power to Make Final Agency Decision. — Where the Commissioner of Insurance delegated to his appointed hearing officer the power to make the final agency decision, the commissioner made an unlawful delegation of his powers. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

When a revised classification and rate plan change is filed, the last sentence in § 58-30.4 provides that "the filing, hearing,

disapproval, review and appeal procedures before the Commissioner and the courts" shall be subject to the procedures "as provided for rates and classification plans in §§ 58-124.20, 58-124.21, and 58-124.22." Of these statutes, only this section speaks to any duty of the commissioner relevant to the subject. The statute declares that once there has been a filing and once there has been notice given by the commissioner, there must be a hearing. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

For discussion of respective powers and duties of the Commissioner and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 845 (1983).

§ 58-124.22. Appeal of Commissioner's order.

CASE NOTES

When a revised classification and rate plan change is filed, the last sentence in § 58-30.4 provides that "the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts" shall be subject to the procedures "as provided for rates and classification plans in §§ 58-124.20, 58-124.21, and 58-124.22." Of these statutes, only § 58-124.21(a) speaks to any duty of the commissioner relevant to the subject. The statute declares that once there has been a filing and once there has been notice given by the commissioner, there must be a hearing. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

Cited in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 845 (1983).

§ 58-124.23. Deviations.

(a) No insurer, officer, agent or representative thereof shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State which does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the Bureau. However, an insurer may deviate from the rates promulgated by the Bureau provided the insurer has filed the deviation to be applied both with the Bureau and the Commissioner, and provided the said deviation is uniform in its application to all risks in the State of the class to which such deviation is to apply; and provided such deviation is approved by the Commissioner. The Commissioner shall approve proposed deviations if the same do not render the rates excessive, inadequate or unfairly discriminatory. If approved the deviation shall remain in force for a period of one year from the date of approval by the Commissioner. Such deviation may be renewed annually subject to all of the foregoing provisions.

(c) Any deviation with respect to workers' compensation and employers' liability insurance written in connection therewith as filed under subsection (a) of this section shall apply uniformly to all classifications.

(1977, c. 828, s. 6; 1983, c. 162, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective Apr. 11, 1983, deleted the former last sentence of subsection (a), which read "Those portions of this section providing for deviations shall not apply to workers' compensation and employers' liability insurance written in connection therewith," and added subsection (c).

§ 58-124.26: Expired.

Editor's Note. — Section 58-124.26 expired under its own terms July 1, 1983.

§ 58-124.30. Payment of dividends not prohibited or regulated; plan for payment into rating system.

Nothing in this Article will be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. Individual policyholder loss experience may be considered as a factor in determining dividends for workers' compensation insurance and employers' liability insurance written in connection therewith. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers will not be deemed a rating plan or system. (1979, c. 824, s. 6; 1983, c. 374, s. 1.)

Effect of Amendments. — The 1983 amendment, effective May 23, 1983, inserted the present second sentence.

Article 17B.

Postassessment Insurance Guaranty Association.

§ 58-155.60. Use of deposits made by insolvent insurer.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

SUBCHAPTER III. FIRE INSURANCE.

Article 18B.

Fair Access to Insurance Requirements.

§ 58-173.27. Termination; outstanding obligations; revival and extension.

This Article shall expire on December 31, 1985, except that rights and obligations incurred by the Association and its members to be established pursuant to the provisions of this Chapter shall not be impaired by the expiration of this Article, and such Association shall be continued for the purpose of performing such obligations. If the Urban Property Protection and Reimbursement Act of 1968 expires at any time prior to December 31, 1985, this Article shall remain in full force and effect until said date. (1969, c. 1284; 1973, c. 1440, s. 1; 1977, c. 109; 1979, 2nd Sess., c. 1159; 1981, c. 875; 1983, c. 396.)

Effect of Amendments. — The 1983 amendment, effective May 26, 1983, substituted "December 31, 1985" for "December 31, 1983" in the first and second sentences.

Article 18C.

North Carolina Health Care Liability Reinsurance Exchange.

§§ 58-173.34 to 58-173.51: Repealed by Session Laws 1983, c. 416, s. 2, effective June 2, 1983.

Article 19.

Fire Insurance Policies.

§ 58-176. Fire insurance contract; standard policy provisions.

Legal Periodicals. — For note discussing interpretation of notice provisions in insurance contracts, in light of Great Am. Ins. Co. v. C.G. Tate Constr. Co., 303 N.C. 387, 279 S.E.2d 769 (1981), see 61 N.C.L. Rev. 167 (1982).

§ 58-177. Standard policy; permissible variations.

Legal Periodicals. — For note discussing interpretation of notice provisions in insurance contracts, in light of Great Am. Ins. Co. v. C.G. Tate Constr. Co., 303 N.C. 387, 279 S.E.2d 769 (1981), see 61 N.C.L. Rev. 167 (1982).

§ 58-180.3. Farmowners' and other property policies; ice, snow, or sleet damage.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

Article 21.

Insuring State Property, Officials and Employees.

§ 58-191. Payment of losses; rules and regulations; sprinkler leakage insurance.

In case of total loss of any property of any State institution or partial loss thereof or the loss or damage of any other aforesaid state-owned property, the Commissioner of Insurance is authorized, empowered and directed to determine the amount of the loss and to certify the amount of loss to the department or institution concerned, to the Budget Bureau and to the Governor and Council of State. The Governor and Council of State may authorize transfers from the "State Property Fire Insurance Fund" to the State agency having suffered a fire damage in such amounts as they may consider necessary to restore the loss sustained, and in the event there is not a sufficient sum in said State

Property Fire Insurance Fund, the Governor and Council of State may supplement said fund from the Contingency and Emergency Fund, and if there is not a sufficient amount therein, then from the State Postwar Reserve Fund.

The Commissioner of Insurance, with the approval of the Council of State, is authorized and empowered to adopt and promulgate all such rules and regulations as may be necessary to carry out the purpose and intent of the provisions of this Article and all such rules and regulations as may be adopted in accordance herewith shall be binding upon all the departments, bureaus, agencies and institutions of the State. The Commissioner of Insurance, with the approval of the Governor and Council of State, is authorized and empowered to purchase from insurers admitted to do business in North Carolina such insurance or reinsurance as may be necessary to protect the State Property Fire Insurance Fund against loss on any one building and contents in excess of not less than fifty thousand dollars ($50,000). The premiums on such coverage shall be paid from the State Property Fire Insurance Fund hereinbefore provided.

Upon request of any State department, agency or institution, sprinkler leakage insurance shall be provided on designated state-owned property of such department, agency or institution which is insured by the State Property Fire Insurance Fund. Premiums for such insurance coverage shall be paid by each requesting department, agency or institution in accordance with rates fixed by the Commissioner of Insurance. Losses covered by such insurance may be paid out of the State Property Fire Insurance Fund in the same manner as fire losses. The Commissioner of Insurance, with the approval of the Governor and Council of State, is authorized and empowered to purchase from insurers admitted to do business in North Carolina such insurance or reinsurance as may be necessary to protect the State Property Fire Insurance Fund against loss with respect to such insurance coverage. (1945, c. 1027, s. 3; 1951, c. 802; 1959, c. 182, s. 2; 1983, c. 913, s. 7.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted the former last sentence of the first paragraph, which read "Such funds as shall be allocated from such reserve fund shall be paid therefrom upon warrant of the State Auditor."

§ 58-191.4. Transfer from fund for local fire protection.

Of the funds available in the cash balance of the State Property Fire Insurance Fund, the sum of one million four hundred fifty thousand dollars ($1,450,000) shall be transferred annually beginning in 1983-84 to the Office of State Budget and Management for compensating political subdivisions of the State for providing local fire protection on State-owned buildings and their contents, provided, however that beginning with the 1984-85 fiscal year if the State Treasurer makes a written finding to the Director of the Budget that the transfer for the 1984-85 fiscal year (or appropriate succeeding years) would cause financial instability in the State Property Fire Insurance Fund, then with the approval of the Director of the Budget after receiving the advice of the Advisory Budget Commission, funds from the general fund shall supplement funds from the State Property Fire Insurance Fund that the State Treasurer certifies are available without causing financial instability so that the total State aid to local subdivisions under this section will remain at one million four hundred fifty thousand dollars ($1,450,000) for each fiscal year. The Office of State Budget and Management shall develop an equitable and uniform statewide method for distributing these funds to the State's political subdivisions. (1983, c. 761, s. 21.)

Editor's Note. — Session Laws 1983, c. 761, s. 21 makes this section effective July 1, 1983.

Session Laws 1983, c. 761, s. 259, contains a severability clause.

§ 58-194.1. Liability insurance required for state-owned vehicles.

Every department, agency or institution of the State shall acquire motor vehicle liability insurance on all state-owned motor vehicles under its control. (1959, c. 1248; 1983, c. 717, s. 10.)

Editor's Note. — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. — The 1983 amendment, effective July 11, 1983, deleted the second sentence of this section, which read "A general fund department, agency or institution which does not have sufficient funds within its existing budget to pay the premiums for such insurance may, with the approval of the Advisory Budget Commission, make application to the Director of the Budget for allocation of funds for payment of premiums out of the contingent or emergency appropriation in the manner prescribed by G.S. 143-12."

SUBCHAPTER IV. LIFE INSURANCE.

ARTICLE 22.

General Regulations of Business.

§ 58-205.3. Interest payments on death benefits.

(a) Each insurer admitted to transact life insurance in this State which, without the written consent of the beneficiary, fails or refuses to pay the death proceeds or death benefits in accordance with the terms of any policy of life or accident insurance issued by it in this State within 30 days after receipt of satisfactory proof of loss because of the death, whether accidental or otherwise, of the insured shall pay interest, at a rate not less than the then current rate of interest on death proceeds left on deposit with the insurer computed from the date of the insured's death, on any moneys payable and unpaid after the expiration of such 30-day period. As used in this subsection, the phrase "satisfactory proof of loss because of the death" includes, but is not limited to, a certified copy of the death certificate; or a written statement by the attending physician at the time of death that contains the following information: (i) the name and address of the physician, who must be duly licensed to practice medicine in the United States; (ii) the name of the deceased; (iii) the date, time, and place of the death; and (iv) the immediate cause of the death.
(1977, c. 395, s. 1; 1983, c. 749.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, added the last sentence of subsection (a).

§ 58-213. Exemption from execution.

Legal Periodicals. — For article analyzing North Carolina's exemptions law, see 18 Wake Forest L. Rev. 1025 (1982).

Article 22B.

Regulation of Interest Rates on Life Insurance Policy Loans.

§ 58-213.18. Purpose.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

Article 24A.

Mutual Burial Associations.

§ 58-241.6. Mutual burial associations placed under supervision of Burial Association Commission; Commission to select Burial Association Administrator.

All mutual burial associations now organized in the State of North Carolina, and all mutual burial associations hereafter organized and operating within said State, shall be under the general supervision of the North Carolina Mutual Burial Association Commission. The number of members composing this Commission and the manner of electing or appointing such members shall be as set out in G.S. 58-241.7.

The Commission shall maintain and operate such office facilities and shall employ such investigative, accounting, legal, secretarial and clerical employees as may be necessary for the efficient administration of the mutual burial association laws and regulations adopted pursuant thereto. The chief executive officer and administrator of such office shall be known as the Burial Association Administrator, and the office shall be known as the office of the Burial Association Administrator. All expenses of such office facilities and personnel shall be paid from funds coming to the office of the burial association pursuant to this Article and other applicable law. The Administrator shall have all powers granted to the Burial Association Administrator by this Article, all powers which the North Carolina Mutual Burial Association Commission may lawfully grant to such Administrator and all powers necessary and incidental to the powers heretofore enumerated. The person heretofore appointed by the Governor of the State of North Carolina and serving as Burial Association Administrator on July 1, 1975, shall serve until the completion of the term for which such person was appointed. If the office of the Burial Association Administrator shall become vacant for any reason prior to the expiration of the term of the person presently holding the office, such vacancy shall be filled by the Governor of the State of North Carolina and the person thus appointed shall serve only for the remainder of the unexpired term. Thereafter, the Governor shall appoint the Burial Association Administrator upon recommendation of the Burial Association Commission. The salary of the person serving as Burial Association Administrator on July 1, 1975, and the salary of any person serving as Burial Association Administrator throughout the remainder of any term for which such present incumbent was appointed, shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The salary of the Burial Association Administrator shall be set in accordance with Chapter 126 of the General Statutes, the State Personnel Act. (1941, c. 130, ss. 2, 19; 1943, c. 170; 1957, c. 541, s. 4; 1975, c. 837; 1981, c. 884, s. 3; 1983, c. 717, s. 11.)

Editor's Note. —
Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. —
The 1983 amendment, effective July 11, 1983, rewrote the last sentence of the second paragraph, which read "Thereafter, the salary of the Burial Association Administrator shall be fixed by the North Carolina Mutual Burial Association Commission subject to the approval of the Advisory Budget Commission."

§ 58-241.11. Assessments against association for expenses of Burial Association Administrator.

In order to meet the expenses of the supervision of the burial associations, the North Carolina Mutual Burial Association Commission shall prepare an annual budget for the office of the Burial Association Administrator. Thereafter, the Burial Association Administrator shall assess each burial association one hundred dollars ($100.00) and shall prorate the remaining amount of this budget, over and above any other funds made available to him for this purpose, and assess each association on a pro rata basis in accordance with the number of members of each association. Each burial association shall remit to the Burial Association Administrator its pro rata part of the total assessment, which expense shall be included in the thirty per centum (30%) expense allowance as provided in Article 13 of [G.S. 58-241.9]. This assessment shall be made on the first day of July of each and every year and said assessment shall be paid within 30 days thereafter. If any association shall fail or refuse to pay such assessment within 30 days, the Burial Association Administrator is authorized to transfer all memberships and assets of every kind and description to the nearest association that is found by the Burial Association Administrator to be in good sound financial condition. (1941, c. 130, s. 6; 1943, c. 272, s. 3; 1945, c. 125, s. 3; 1947, c. 100, s. 3; 1949, c. 201, s. 4; 1951, c. 901, s. 1; 1955, c. 259, ss. 1, 2; 1967, c. 985, s. 1; 1969, c. 1006, s. 2; 1973, c. 1476, s. 1; 1975, c. 837; 1977, c. 748, s. 3; 1981, c. 989, s. 6; 1983, c. 717, s. 12.)

Editor's Note. —
Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. —
The 1983 amendment, effective July 11, 1983, deleted the second sentence of this section, which read "This budget shall be submitted to and shall be subject to approval by the Advisory Budget Commission."

§ 58-241.34. Authority of foreign or domestic mutual burial association or domestic or foreign insurance company to purchase, merge or consolidate with North Carolina mutual burial associations.

(a) Any mutual burial association or insurance company operating pursuant to the laws of this State or any other state may purchase the assets of, merge, or consolidate with a North Carolina chartered mutual burial association in accordance with the laws of this State and any rules promulgated by the North Carolina Mutual Burial Association Commission to protect the interest of members of mutual burial associations prior to the purchase, merger, or consolidation of the association.

(b) Notwithstanding any provision of Chapter 55 or Chapter 55A, any domestic or foreign insurance company which if organized in North Carolina would have to be organized under Chapter 55 may merge or consolidate with any domestic mutual burial association. When a domestic or foreign insurance company consolidates or merges with a domestic mutual burial association and sells insurance or burial benefits in excess of two hundred dollars ($200.00), it

shall be subject to all of the provisions of the insurance laws of North Carolina.

(c) If the assets and liabilities of a North Carolina mutual burial association are purchased, and no merger, consolidation or dissolution is effectuated in connection with the purchase, the management and administrative operations of the North Carolina mutual burial association shall be transferred to the purchasing entity.

(d) In any purchase, merger, or consolidation pursuant to this section, the membership of the mutual burial association shall be guaranteed coverage in the amounts held by each member at the time of such purchase, merger, or consolidation. During the life of the member, this coverage shall not exceed the annual rate charged by the mutual burial association that is being purchased, merged, or consolidated. An insurance company which purchases, merges with, or consolidates with a North Carolina mutual burial association shall establish and maintain life insurance reserves in accordance with the insurance laws of North Carolina for those burial insurance policies existing at the time of the purchase, merger, or consolidation. A North Carolina mutual burial association or foreign mutual burial association which purchases, merges with, or consolidates with a North Carolina mutual burial association shall establish and maintain burial insurance reserves in accordance with the burial insurance laws of North Carolina for those burial insurance policies existing at the time of the purchase, merger, or consolidation. (1981, c. 989, s. 5; 1983, c. 766.)

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, rewrote this section. The act also amended the section catchline.

SUBCHAPTER V. AUTOMOBILE INSURANCE.

ARTICLE 25A.

North Carolina Motor Vehicle Reinsurance Facility.

§ 58-248.26. Definitions.

Legal Periodicals. —
For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

§ 58-248.27. North Carolina Motor Vehicle Reinsurance Facility; creation; membership.

There is created a nonprofit unincorporated legal entity to be known as the North Carolina Motor Vehicle Reinsurance Facility consisting of all insurers licensed to write and engaged in writing within this State motor vehicle insurance or any component thereof. Every such insurer, as a prerequisite to further engaging in writing such insurance in this State, shall be a member of the Facility and shall be bound by the rules of operation thereof as provided for in this Article and as promulgated by the Board of Governors. No company may withdraw from membership in the Facility unless it ceases to write motor vehicle insurance in this State or ceases to be licensed to write such insurance. (1973, c. 818, s. 1; 1983, c. 416, s. 6.)

Effect of Amendments. — The 1983 amendment, effective June 2, 1983, substituted "North Carolina Motor Vehicle Reinsurance Facility" for "North Carolina Reinsurance Facility" in the first sentence.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

§ 58-248.33. The Facility; functions; administration.

(b) The Facility shall reinsure for each coverage available therein to the standard percentage of one hundred percent (100%) or lesser equitable percentage established in the plan of operation as follows:

(1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:

a. Bodily injury liability: twenty-five thousand dollars ($25,000) each person, fifty thousand dollars ($50,000) each accident;

b. Property damage liability: ten thousand dollars ($10,000) each accident;

c. Medical payments: one thousand dollars ($1,000) each person; except that this coverage shall not be available for motorcycles;

d. Uninsured motorist: twenty-five thousand dollars ($25,000) each person; fifty thousand dollars ($50,000) each accident for bodily injury; five thousand dollars ($5,000) each accident property damage (one hundred dollars ($100.00) deductible);

e. Any other motor vehicle insurance limits in the amount required by any law or regulatory agency regulation for those motor carriers who furnish proof of insurance or file certificates of insurance with any regulatory agency in order to comply with the security or other financial responsibility requirements of the North Carolina Utilities Commission and the United States Interstate Commerce Commission or who are subject to financial responsibility requirements established under the Federal Motor Carrier Act of 1980.

(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

Bodily injury liability: one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident;

Property damage liability: fifty thousand dollars ($50,000) each accident;

Medical payments: two thousand dollars ($2,000) each person;

Uninsured motorist: one hundred thousand dollars ($100,000) each person and each accident for bodily injury and five thousand dollars ($5,000) for property damage (one hundred dollars ($100.00) deductible).

(3) Whenever the additional ceding privileges are provided as in G.S. 58-248.33(b)(2) for any component of motor vehicle insurance, the same additional ceding privileges shall be available to "all other" types of risks subject to the rating jurisdiction of the North Carolina Rate Bureau.

(d) The Facility shall be administered by a Board of Governors. The Board of Governors shall consist of nine members having one vote each from the classifications hereinafter enumerated plus the Commissioner who shall serve ex officio without vote. Each Facility insurance company member serving on the Board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the Board at the same time. Five members of the Board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the following groups: the American Insurance

Association (or its successors), the American Mutual Insurance Alliance (or its successors), the National Association of Independent Insurers (or its successors), all other stock insurers not affiliated with the above groups, and all other nonstock insurers not affiliated with the above groups. The Commissioner of Insurance shall appoint four members of the Board who shall be fire and casualty insurance agents licensed in this State and actively engaged in writing motor vehicle insurance in this State. The Commissioner shall select one agent from among a list of two nominees submitted by the Independent Insurance Agents of North Carolina, Inc., and one agent from among a list of two nominees submitted by the Carolinas Association of Professional Insurance Agents. The initial term of office of said Board members shall be two years. Following completion of initial terms, successors to the members of the original Board of Governors shall be selected to serve three years. All members of the Board of Governors shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the Board from any of the aforementioned classifications until such vacancies are filled in accordance with the provisions of this Article.

(g) Except as may be delegated specifically to others in the plan of operation or reserved to the members, power and responsibility for the establishment and operation of the Facility is vested in the Board of Governors, which power and responsibility include but is not limited to the following:

(1) To sue and be sued in the name of the Facility. No judgment against the Facility shall create any direct liability in the individual member companies of the Facility.

(2) To receive and record cessions.

(3) To assess members on the basis of participation ratios established in the plan of operation to cover anticipated or incurred costs of operation and administration of the Facility at such intervals as are established in the plan of operation.

(4) To contract for goods and services from others to assure the efficient operation of the Facility.

(5) To hear and determine complaints of any company, agent or other interested party concerning the operation of the Facility.

(6) Upon the request of any licensed fire and casualty agent meeting any two of the standards set forth below as determined by the Commissioner of Insurance within 10 days of the receipt of the application, the Facility shall contract with one or more members within 20 days of receipt of the determination to appoint such licensed fire and casualty agent as designated agents in accordance with reasonable rules as are established by the plan of operation. Such standards shall be:

a. Whether the agent's evidence establishes that he has been conducting his business in a community for a period of at least one year;

b. Whether the agent's evidence establishes that he had a gross premium volume during the 13 months next preceding the date of his application of at least twenty thousand dollars ($20,000) from motor vehicle insurance;

c. Whether the agent's evidence establishes that the number of eligible risks served by him during the 13 months next preceding the date of his application was 200 or more;

d. Whether the agent's evidence establishes a growth in eligible risks served and premium volume during his years of service as an agent;

e. Whether the agent's evidence establishes that he made available to eligible risks premium financing or any other plan for deferred payment of premiums.

If no insurer is willing to contract with any such agent on terms acceptable to the Board, the Facility shall license such agents to write directly on behalf of the Facility. However, for this purpose, the Facility does not act as an insurer, but only as the statutory agent of all the members of the Facility which shall be bound on risks written by the Facility's appointed agent. Adequate provision shall be made by the Facility to assure that business produced by designated agents which would meet the underwriting criteria of the company shall be written at the voluntary rate and not at the Facility rate if higher. The Facility may contract with one or more servicing carriers and shall promulgate fair and reasonable underwriting procedures to require that business produced by Facility agents and written through said carriers shall be appropriately classified and rated. To this end, the same underwriting criteria for classification and rates used for its voluntary agents shall be used by the servicing carrier servicing such Facility agents in order to determine whether the voluntary rate or the Facility rate shall apply. All business produced by designated agents or Facility agents may be ceded to the Facility.

The Commissioner shall require, as a condition precedent to the issuance, renewal, or continuation of a resident agent's license to any designated agent to act for the company appointing such designated agent under contract with the Facility, that the designated agent file and thereafter maintain in force while so licensed a bond in favor of the State of North Carolina executed by an authorized corporate surety approved by the Commissioner, cash, mortgage on real property, or other securities approved by the Commissioner, in the amount of ten thousand dollars ($10,000) for the use of aggrieved persons. Such bond, cash, mortgage, or other securities shall be conditioned on the accounting by the designated agent (i) to any person requesting the designated agent to obtain motor vehicle insurance for moneys or premiums collected in connection therewith, and (ii) to the company providing coverage with respect to any such moneys or premiums under contract with the Facility. Any such bond shall remain in force until the surety is released from liability by the Commissioner, or until the bond is cancelled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon 30 days' advance notice in writing filed with the Commissioner.

(7) To maintain all loss, expense, and premium data relative to all risks reinsured in the Facility, and to require each member to furnish such statistics relative to insurance reinsured by the Facility at such times and in such form and detail as may be required.

(8) To establish fair and reasonable procedures for the sharing among members of any loss on Facility business which cannot be recouped pursuant to G.S. 58-248.34(f) and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. Such shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method.

(9) To receive or distribute all sums required by the operation of the Facility.

(10) To accept all risks submitted in accordance with this Article.

(11) To establish procedures for reviewing claims practices of member companies to the end that claims to the account of the Facility will be handled fairly and efficiently.

(12) To adopt and enforce all rules and to do anything else where the Board is not elsewhere herein specifically empowered which is otherwise necessary to accomplish the purpose of the Facility and is not in conflict with the other provisions of this Article.

(1973, c. 818, s. 1; 1977, c. 710; c. 828, ss. 14-19; 1977, 2nd Sess., c. 1135; 1979, c. 676, ss. 1, 2; 1981, c. 776, ss. 2, 3; 1983, c. 416, ss. 3, 4; c. 690.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The first 1983 amendment, effective June 2, 1983, substituted "North Carolina Rate Bureau" for "North Carolina Automobile Rate Administrative Office" at the end of subdivision (b)(3) and substituted "Carolinas Association of Professional Insurance Agents" for "Carolinas Association of Mutual Insurance Agents, North Carolina Division" at the end of the eighth sentence of subsection (d).

The second 1983 amendment, effective Oct. 1, 1983, added the last paragraph in subdivision (g)(6).

Legal Periodicals. —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

§ 58-248.34. Plan of operation.

Legal Periodicals. —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

§ 58-248.39. Hearings; review.

Legal Periodicals. — For article discussing limitations on ad hoc adjudicatory rulemaking by an administrative agency, see 61 N.C.L. Rev. 67 (1982).

For article analyzing the scope of the North Carolina Insurance Commissioner's rate-making authority, see 61 N.C.L. Rev. 97 (1982).

SUBCHAPTER VI. ACCIDENT AND HEALTH INSURANCE.

ARTICLE 26.

Nature of Policies.

§ 58-251.1. Accident and health policy provisions.

Legal Periodicals. —

For note discussing interpretation of notice provisions in insurance contracts, in light of Great Am. Ins. Co. v. C.G. Tate Constr. Co., 303 N.C. 387, 279 S.E.2d 769 (1981), see 61 N.C.L. Rev. 167 (1982).

§ 58-254.2. Industrial sick benefit insurance; provisions.

Legal Periodicals. — For note discussing interpretation of notice provisions in insurance contracts, in light of Great Am. Ins. Co. v. C.G. Tate Constr. Co., 303 N.C. 387, 279 S.E.2d 769 (1981), see 61 N.C.L. Rev. 167 (1982).

ARTICLE 26C.

Group Health Insurance Continuation and Conversion Privileges.

Part 1. Continuation.

§ 58-254.35. Definitions.

Editor's Note. —

Session Laws 1981, c. 706, s. 2, as amended by Session Laws 1983, c. 142, s. 1, provides, in part: "This act shall apply only to group policies delivered, issued for delivery, renewed, or amended on or after the effective date of this act."

§ 58-254.42. Termination of continuation.

Continuation of insurance under the group policy for any person shall terminate on the earliest of the following dates:

(4) The date on which the group policy is terminated or, in the case of a multiple employer plan, the date his employer terminates participation under the group master policy. When this occurs the employee or member shall have the privilege described in G.S. 58-254.44 if the date of termination precedes that on which his actual continuation of insurance under that policy would have terminated. The insurer that insured the group prior to the date of termination shall make a converted policy available to the employee or member. (1981, c. 706, s. 1; 1983, c. 142, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 142, s. 4, provides "Sec. 4. This act shall apply to all group policies, as defined in G.S. 58-254.35(1), that are delivered, issued for delivery, renewed, or amended after the effective date of this act." The act became effective April 6, 1983.

Effect of Amendments. — The 1983 amendment, effective Apr. 6, 1983, added the last sentence of subdivision (4).

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

Part 2. Conversion.

§ 58-254.45. Restrictions.

A converted policy shall not be available to an employee or member if termination of his insurance under the group policy occurred because:

(5) He failed to continue his insurance for the entire maximum period of three consecutive months following termination of active employment as provided for in Part 1 of this Article, unless that failure to continue was due to a change of insurer by the employer and said change of insurer was consummated during the three-month continuation period. In that event the employee or member shall be entitled to be issued a converted policy by the insurer that provided the group policy to the employer prior to the change of insurer. (1981, c. 706, s. 1; 1983, c. 142, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 142,

s. 4, provides "Sec. 4. This act shall apply to all group policies, as defined in G.S. 58-254.35(1), that are delivered, issued for delivery, renewed, or amended after the effective date of this act." The act became effective April 6, 1983.

Effect of Amendments. — The 1983 amendment, effective Apr. 6, 1983, in subdivision (5) inserted the language beginning "unless that failure" at the end of the first sentence and added the second sentence.

§ 58-254.47. Premium.

(c) All premium rates and adjustments to premium rates for converted policies shall be reasonable and must be filed with the Commissioner prior to use. A premium rate shall be deemed to be reasonable if it can be demonstrated by the insurer that the premium charged is expected to produce an incurred loss ratio to earned premiums of not less than sixty percent (60%) for all individual policies providing similar benefits offered and issued by the insurer. If an insurer experiences an incurred loss ratio of greater than eighty percent (80%) for all such policies, it shall be deemed reasonable for that insurer to increase premium rates to a level that will produce a prospective incurred loss ratio of no greater than eighty percent (80%), and the insurer shall file such new rates with the Commissioner not more often than once a year. (1981, c. 706, s. 1; 1983, c. 669.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, substituted "not more often than once a year" for "Provided, however, that such action may be taken by the insurer at intervals not more frequently than two years, the first of which shall be no earlier than January 1, 1984" at the end of subsection (c).

§ 58-254.57. Other conversion provisions.

(c) Subject to the conditions set forth in this subsection, the conversion privilege shall also be available (i) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and any eligible children whose coverage under the group policy terminates by reason of such death, or if the group policy provides for continuation of dependents' coverage following the employee's or member's death, at the end of such continuation, or (ii) to the spouse of the employee or member upon termination of coverage of the spouse because the spouse becomes ineligible because of divorce, separation, or otherwise, while the employee or member remains insured under the group policy, with respect to the spouse and such children whose coverage under the group policy terminates at the same time, or (iii) to a child solely with respect to himself upon termination of his coverage by reason of ceasing to be an eligible family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.

(1981, c. 706, s. 1; 1983, c. 668, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 668, s. 2, provides: "This act shall apply to all group policies, as defined in G.S. 58-254.35(1), that are issued, renewed, or amended after the effective date of this act."

Section 3 of the act provides that the act is effective upon ratification. The act was ratified July 1, 1983.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, inserted "because of divorce, separation, or otherwise" in clause (ii) of subsection (c).

SUBCHAPTER VII. FRATERNAL ORDERS AND SOCIETIES.

ARTICLE 28.

Fraternal Orders.

§ 58-283. Benefits not subject to debts.

Legal Periodicals. — For article analyzing North Carolina's exemptions law, see 18 Wake Forest L. Rev. 1025 (1982).

SUBCHAPTER IX. READABLE INSURANCE POLICIES.

ARTICLE 33.

Readable Insurance Policies.

§ 58-366. Scope of application.

(b) Nothing in this Article applies to:

(1) Any policy that is a security subject to federal jurisdiction;

(2) Any group policy covering a group of 1,000 or more lives at date of issue, other than a group credit life insurance policy, nor any group policy delivered or issued for delivery outside of this State; however, this does not exempt any certificate issued pursuant to a group policy delivered or issued for delivery in this State;

(3) Any group annuity contract that serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;

(4) Any form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates such forms must be approved under this Article;

(5) The renewal of a policy delivered or issued for delivery prior to the date such policy must be approved under this Article; nor

(6) Insurers who issue benefit booklets on group and nongroup bases for the policies described in G.S. 58-371(a)(2). In such cases, the provisions of this Article apply to the benefit booklets furnished to the persons insured.

(7) Insurance on farm buildings (other than farm dwellings and their appurtenant structures); farm personal property; travel or camper trailers designed to be pulled by private passenger motor vehicles unless insured under policies covering nonfleet private passenger motor vehicles; nonfleet private passenger motor vehicles insured under a commercial motor vehicle insurance policy when combined with a commercial risk; residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and marine, general liability, burglary and theft, glass, and animal collision insurance except when such coverages are written as an integral part of a multiple line insurance policy for which there is an indivisible premium.

(1979, c. 755, s. 1; 1981, c. 888, s. 6; 1983, c. 393, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1983 amendment, effective May 26, 1983, inserted "nonfleet private passenger motor vehicles insured under a commercial motor vehicle insurance policy when combined with a commercial risk" in subdivision (b)(7).

§ 58-371. Application to policies; dates; duties of the Commissioner.

(a) The filing requirements of G.S. 58-370 apply as follows:

(1) As described in Article 12B of this Chapter, to all policies of private passenger nonfleet motor vehicle insurance except as excluded by G.S. 58-366(b)(7), to all policies of insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof and valuable interest therein, and other insurance coverages written in connection with the sale of such property insurance except as excluded in G.S. 58-366(b)(7), that are made, issued, amended, or renewed after March 1, 1981; and

(2) To all policies of life insurance as described in Article 22 of this Chapter, to all benefit certificates issued by fraternal orders and societies as described in Subchapter VII of this Chapter, to all policies of accident and health insurance as described in Subchapter VI of this Chapter, to all subscribers' contracts of hospital, medical, and dental service corporations as described in General Statutes Chapter 57, and to all health maintenance organization evidences of coverage as described in General Statutes Chapter 57A, that are made, issued, amended, or renewed after July 1, 1983.

(1979, c. 755, s. 1; 1979, 2nd Sess., c. 1161, s. 3; 1981, c. 888, s. 7; 1983, c. 393, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1983 amendment, effective May 26, 1983, inserted "except as excluded by G.S. 58-366(b)(7)" in subdivision (a)(1).

Article 34.

Insurance Information and Privacy Protection Act.

§ 58-380. Short title.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

Chapter 59.

Partnership.

ARTICLE 1.

Uniform Limited Partnership Act.

§ 59-1. Limited partnership defined.

CASE NOTES

When Partner May Maintain Action Against Copartner. — As a general rule, one partner cannot sue another partner at law until there has been a complete settlement of the partnership affairs and a balance struck. However, a partner may maintain an action at law against his copartner upon claims growing out of the following state of facts: (1) Where the partnership is terminated, all debts paid, and the partnership affairs otherwise adjusted with nothing remaining to be done but to pay over the amounts due by one to the other, such amount involving no complicated reckoning. (2) Where the partnership is for a single venture or special purpose which has been accomplished, and nothing remains to be done except to pay over the claimant's share. (3) When the joint property has been wrongfully destroyed or converted. Roper v. Thomas, 60 N.C. App. 64, 298 S.E.2d 424 (1982).

§ 59-2. Formation.

CASE NOTES

Cited in Roper v. Thomas, 60 N.C. App. 64, 298 S.E.2d 424 (1982).

§ 59-10. Rights of a limited partner.

CASE NOTES

When Partner May Maintain Action Against Copartner. — As a general rule, one partner cannot sue another partner at law until there has been a complete settlement of the partnership affairs and a balance struck. However, a partner may maintain an action at law against his copartner upon claims growing out of the following state of facts: (1) Where the partnership is terminated, all debts paid, and the partnership affairs otherwise adjusted with nothing remaining to be done but to pay over the amounts due by one to the other, such amount involving no complicated reckoning. (2) Where the partnership is for a single venture or special purpose which has been accomplished, and nothing remains to be done except to pay over the claimant's share. (3) When the joint property has been wrongfully destroyed or converted. Roper v. Thomas, 60 N.C. App. 64, 298 S.E.2d 424 (1982).

ARTICLE 2.

Uniform Partnership Act.

Part 1. Preliminary Provisions.

§ 59-34. Rules of construction.

CASE NOTES

Applied in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

Part 2. Nature of a Partnership.

§ 59-36. Partnership defined.

CASE NOTES

To make a partnership, etc. —
In accord with bound volume. See Zickgraf Hardwood Co. v. Seay, 60 N.C. App. 128, 298 S.E.2d 208 (1982).

Applied in Davis v. Davis, 58 N.C. App. 25, 293 S.E.2d 268 (1982).

Cited in DuBose Steel, Inc. v. Faircloth, 59 N.C. App. 722, 298 S.E.2d 60 (1982).

§ 59-37. Rules for determining the existence of a partnership.

CASE NOTES

Creation by Express or Implied Agreement or Conduct. — Not only may a partnership be formed orally, but it may be created by the agreement or conduct of the parties, either express or implied. Davis v. Davis, 58 N.C. App. 25, 293 S.E.2d 268, cert. denied, 307 N.C. 127, 297 S.E.2d 399 (1982).

Express Agreement Not Required. — A voluntary association of partners may be shown without proving an express agreement to form a partnership; and a finding of its existence may be based upon a rational consideration of the acts and declarations of the parties, warranting the inference that the parties understood that they were partners and acted as such. Davis v. Davis, 58 N.C. App. 25, 293 S.E.2d 268, cert. denied, 307 N.C. 127, 297 S.E.2d 399 (1982).

Inferences from Circumstances of Creation and Operation. — Partnership is a legal concept but the determination of the existence or not of a partnership, as in the case of a trust, involves inferences drawn from an analysis of all the circumstances attendant on its creation and operation. Davis v. Davis, 58 N.C. App. 25, 293 S.E.2d 268, cert. denied, 307 N.C. 127, 297 S.E.2d 399 (1982).

Applied in Zickgraf Hardwood Co. v. Seay, 60 N.C. App. 128, 298 S.E.2d 208 (1982).

§ 59-38. Partnership property.

CASE NOTES

Cited in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

Part 3. Relations of Partners to Persons Dealing with the Partnership.

§ 59-39. Partner agent of partnership as to partnership business.

CASE NOTES

Conveyance with View to Dissolution. — Where a conveyance was not for apparently carrying on in the usual way the business of the partnership, but was with a view to the immediate dissolution of the partnership, neither § 59-40(d) nor subsection (a) of this section applies. Instead, subsection (b) of this section applies. Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-40. Conveyance of real property of the partnership.

CASE NOTES

How Title to Real Property Held. — Under this Article, title to real property owned by a partnership may be held either in the partnership name or in the name of some or all of the partners. Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

Conveyance with View to Dissolution. — Where a conveyance was not for apparently carrying on in the usual way the business of the partnership, but was with a view to the immediate dissolution of the partnership, neither subsection (d) of this section nor § 59-39(a) applies. Instead, § 59-39(b) applies. Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-46. Partner by estoppel.

CASE NOTES

Cited in DuBose Steel, Inc. v. Faircloth, 59 N.C. App. 722, 298 S.E.2d 60 (1982).

Part 5. Property Rights of a Partner.

§ 59-54. Extent of property rights of a partner.

CASE NOTES

Applied in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-55. Nature of a partner's right in specific partnership property.

CASE NOTES

Applied in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

Part 6. Dissolution and Winding Up.

§ 59-59. Dissolution defined.

CASE NOTES

Quoted in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-60. Partnership not terminated by dissolution.

CASE NOTES

Cited in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-61. Causes of dissolution.

CASE NOTES

Applied in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-63. General effect of dissolution on authority of partner.

CASE NOTES

Sale of partnership assets upon dissolution is an act appropriate for winding up. Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

§ 59-65. Power of partner to bind partnership to third persons after dissolution; publication of notice of dissolution.

CASE NOTES

Quoted in Simmons v. Quick-Stop Food Mart, Inc., 307 N.C. 33, 296 S.E.2d 275 (1982).

Chapter 62.

Public Utilities.

Article 2.

Organization of Utilities Commission.

Sec.

62-15. Office of executive director; public staff, structure and function.

Article 5.

Review and Enforcement of Orders.

62-90. Right of appeal; filing of exceptions.
62-91. Appeal docketed; title on appeal; priorities on appeal.
62-92. Parties on appeal.
62-95. Relief pending review on appeal.
62-96. Appeal to Supreme Court.

Article 12.

Motor Carriers.

62-281. Safety regulations applicable to motor carrier and private carrier vehicles.

Article 1.

General Provisions.

§ 62-3. Definitions.

Cross References. — For provision making small power producers as defined in subdivision (27a) of this section subject to the provisions of Part 3 of Article 21 of Chapter 143, the Dam Safety Law, even though certified by the North Carolina Utilities Commission, see § 143-215.25(2)d.

CASE NOTES

Cited in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

Article 2.

Organization of Utilities Commission.

§ 62-15. Office of executive director; public staff, structure and function.

(a) There is established in the Commission the office of executive director, whose salary shall be the same as that fixed for members of the Commission. The executive director shall be appointed by the Governor subject to confirmation by the General Assembly in joint session. The name of the executive director appointed by the Governor shall be submitted to the General Assembly on or before May 1 of the year in which the term of his office begins. The term of office for the executive director shall be six years, and the initial term shall begin July 1, 1977. The executive director may be removed from office by the Governor in the event of his incapacity to serve; and the executive director shall be removed from office by the Governor upon the affirmative recommendation of a majority of the Commission, after consultation with the Utility Review Committee of the General Assembly. In case of a vacancy in the office of executive director for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General

Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the executive director shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

(1949, c. 1009, s. 3; 1963, c. 1165, s. 1; 1977, c. 468, s. 4; 1981, c. 475; 1983, c. 717, s. 12.1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. —

The 1983 amendment, effective July 11, 1983, substituted "after consultation with the Utility Review Committee of the General Assembly" for "concurred in by a majority of the Utility Review Committee of the General Assembly" at the end of the fifth sentence of subsection (a).

CASE NOTES

Applied in State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

Stated in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982).

§ 62-20. Participation by Attorney General in Commission proceedings.

CASE NOTES

Applied in State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

ARTICLE 3.

Powers and Duties of Utilities Commission.

§ 62-30. General powers of Commission.

CASE NOTES

Commission Has No Authority Other Than Granted by Legislature. — The Utilities Commission was created by the General Assembly. In fixing rates to be charged by utilities, it exercises a legislative function and has no authority other than that given to it by the legislature. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

General Power and Authority. — Through this section and § 62-32 the legislature has granted the Utilities Commission such general power and authority to supervise and control public utilities of the State as may be necessary. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

Under § 62-42(5) the Commission has the authority to order the utility to take action necessary to secure reasonably adequate service for the public's need and convenience. Undoubtedly yellow pages could fall within this provision. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

If the Commission may refuse to accept the uncontradicted evidence presented to it by a utility, it most certainly may reject the utility's evidence in favor of evidence presented by other witnesses. State ex rel. Utilities Comm'n v.

Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

The Commission, not the courts, is authorized by the legislature to determine what is a fair rate of return. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

In reviewing the Commission's determination of fair rate of return, the court will only review the record and evidence to determine if the Commission's order is supported by competent evidence. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

Yellow page revenue and expenses should be included in the revenues and expenses of the company when it applies for a rate increase. This is clearly the majority rule. State ex rel. Utilities Comm'n v. Central Tel. Co., — N.C. App. —, 299 S.E.2d 264 (1983).

Telephone utility enjoys a great advantage over all competitors in the field of directory advertising. In addition, this preferred position with all its benefits and revenues is directly related to and a result of the company's public utility function. Therefore, the Utilities Commission does have the authority to include the expenses, revenues and investments related to directory advertising in its ratemaking proceedings. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

Applied in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982).

§ 62-32. Supervisory powers; rates and service.

CASE NOTES

General Power and Authority. — Through § 62-30 and this section the legislature has granted the Utilities Commission such general power and authority to supervise and control public utilities of the State as may be necessary. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

Under § 62-42(5) the Commission has the authority to order the utility to take action necessary to secure reasonably adequate service for the public's need and convenience. Undoubtedly yellow pages could fall within this provision. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

If the Commission may refuse to accept the uncontradicted evidence presented to it by a utility, it most certainly may reject the utility's evidence in favor of evidence presented by other witnesses. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

The Commission, not the courts, is authorized by the legislature to determine what is a fair rate of return. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

In reviewing the Commission's determination of fair rate of return, the court will only review the record and evidence to determine if the Commission's order is supported by competent evidence. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

Yellow page revenue and expenses should be included in the revenues and expenses of the company when it applies for a rate increase. This is clearly the majority rule. State ex rel. Utilities Comm'n v. Central Tel. Co., — N.C. App. —, 299 S.E.2d 264 (1983).

Classified Directory Advertising Revenues. — In making judgment that telephone company's classified directory was an essential aspect of telephone service generally Commission was clearly acting within its authority under § 62-30 and this section, and the Commission correctly concluded that the classified directory advertising revenues should continue to be accounted for in establishing just and reasonable rates for the company in this State. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982), modified, — N.C. —, 299 S.E.2d 763 (1983).

Telephone utility enjoys a great advantage over all competitors in the field of directory advertising. In addition, this preferred position with all its benefits and revenues is directly related to and a result of the company's public utility function. Therefore, the Utilities Commission does have the authority to include the expenses, revenues and investments related to directory advertising in its ratemaking proceedings. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

§ 62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.

CASE NOTES

Power and Duties of Commission. — Under subdivision (a)(5) of this section the Commission has the authority to order the utility to take action necessary to secure reasonably adequate service for the public's need and convenience. Undoubtedly yellow pages could fall within this provision. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

The Commission, not the courts, is authorized by the legislature to determine what is a fair rate of return. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

In reviewing the Commission's determination of fair rate of return, the court will only review the record and evidence to determine if the Commission's order is supported by competent evidence. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

Article 4.

Procedure before the Commission.

§ 62-73. Complaints against public utilities.

CASE NOTES

Applied in State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982).

§ 62-75. Burden of proof.

CASE NOTES

Applied in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982).

Cited in State ex rel. Utilities Comm'n v. Central Tel. Co., — N.C. App. —, 299 S.E.2d 264 (1983).

§ 62-78. Proposed findings, briefs, exceptions, orders, expediting cases, and other procedure.

CASE NOTES

Power to Alter or Amend Orders. — Whatever the effect of subsection (c) of this section on an order filed by a panel of three Commissioners, this does not affect the power of the Utilities Commission to act pursuant to § 62-80. Section 62-80 provides the Utilities Commission may "alter or amend" an order after a hearing. By using the words "alter or amend" the legislature intended that the Commission may change an order in some respects without considering all factors that must be considered in a general rate case. The statute does not limit changes in orders to those that have not become final. State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982).

§ 62-80. Powers of Commission to rescind, alter or amend prior order or decision.

CASE NOTES

General Rate Hearing Not Required for Amendment. — This section requires that the procedures of complaint hearings shall be used before amending an order but it does not require a general rate hearing before an order may be amended. State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982).

Effect of § 62-78(c) on Power to Alter or Amend. — Whatever the effect of § 62-78(c) on an order filed by a panel of three Commissioners, this does not affect the power of the Utilities Commission to act pursuant to this section. This section provides that the Utilities Commission may "alter or amend" an order after a hearing. By using the words "alter or amend" the legislature intended that the Commission may change an order in some respects without considering all factors that must be considered in a general rate case. The statute does not limit changes in orders to those that have not become final. State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982).

ARTICLE 5.

Review and Enforcement of Orders.

§ 62-90. Right of appeal; filing of exceptions.

(a) Any party to a proceeding before the Commission may appeal from any final order or decision of the Commission within 30 days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commission, not to exceed 30 additional days, and by order made within 30 days, if the party aggrieved by such decision or order shall file with the Commission notice of appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decisions or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission.

All other parties may give notice of cross appeal and set out exceptions which shall set forth specifically the grounds on which the said party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission. Such notice of cross appeal and exceptions shall be filed with the Commission within 20 days after the first notice of appeal and exceptions has been filed, or within such time thereafter as may be fixed by the Commission, not to exceed 20 additional days by order made within 20 days of the first filed notice of appeal and exceptions.

(d) The appeal shall lie to the appellate division of the General Court of Justice as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.

(g) Repealed by Session Laws 1983, c. 526, s. 5, effective July 1, 1983. (1949, c. 989, s. 1; 1955, c. 1207, s. 1; 1959, c. 639, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 1; 1975, c. 391, s. 12; 1983, c. 526, ss. 4, 5; c. 572.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Cross References. — As to jurisdiction of the Supreme Court to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission, see N.C. Const., Art. IV, § 12(1).

Effect of Amendments. — The first 1983 amendment, effective July 1, 1983, and applicable to final orders of the Utilities Commission entered on or after that date, rewrote the first sentence of subsection (d), which read "The appeal shall lie to the Court of Appeals as

provided in G.S. 7A-29," and deleted subsection (g), which read "The Court of Appeals shall hear and determine all matters advising on such appeal, as in this Article provided, and may in the exercise of its discretion assign the hearing of said appeal to any panel of the Court of Appeals."

The second 1983 amendment, effective Oct. 1, 1983, substituted "Any party" for "No party," deleted "unless" preceding "within 30 days after the entry," inserted "not to exceed 30 additional days, and," deleted "if" preceding "the party aggrieved by such decision," and substituted "said decisions" for "said decision" in the first paragraph of subsection (a), and added the second paragraph of that subsection.

§ 62-91. Appeal docketed; title on appeal; priorities on appeal.

Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Utilities Commission shall be entitled "State of North Carolina ex rel. Utilities Commission (here add any additional parties in support of the Commission Order and their capacity before the Commission), Appellee(s) v. (here insert name of appellant and his capacity before the Commission), Appellant." Appeals from the Utilities Commission pending in the superior courts on September 30, 1967, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 6; 1975, c. 391, s. 13; 1983, c. 526, s. 6.)

Cross References. — As to jurisdiction of the Supreme Court to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission, see N.C. Const., Art. IV, § 12(1).

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to final orders of the Utilities Commission entered on or after that date, deleted the former last sentence, which read "Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of appellate procedure."

§ 62-92. Parties on appeal.

In any appeal to the appellate division of the General Court of Justice, the complainant in the original complaint before the Commission shall be a party to the record and each of the parties to the proceeding before the Commission shall have a right to appear and participate in said appeal. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 2; 1983, c. 526, s. 7.)

Cross References. — As to jurisdiction of the Supreme Court to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission, see N.C. Const., Art. IV, § 12(1).

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to final orders of the Utilities Commission entered on or after that date, substituted "appellate division of the General Court of Justice" for "Court of Appeals."

§ 62-94. Record on appeal; extent of review.

CASE NOTES

I. IN GENERAL.

Limitation on Authority to Review. —

Under applicable standards of appellate review, the Court of Appeals is not at liberty to substitute its judgment for that of the Commission. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982), modified, — N.C. —, 299 S.E.2d 763 (1983).

Findings supported, etc. —

The Commission's findings and conclusions,

where supported by competent, material, and substantial evidence, considering the whole record, and taking into account any contradictory evidence or evidence from which conflicting inferences could be drawn, must be affirmed. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 57 N.C. App. 489, 291 S.E.2d 789 (1982), modified, — N.C. —, 299 S.E.2d 763 (1983).

Burden Is on Appellant, etc. —

In accord with 2nd paragraph in original. See State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

Quoted in State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., — N.C. App. —, 300 S.E.2d 395 (1983).

Cited in State ex rel. Utilities Comm'n v. Central Tel. Co., — N.C. App. —, 299 S.E.2d 264 (1983); State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

§ 62-95. Relief pending review on appeal.

Pending judicial review, the Commission is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, a judge of the appellate court with jurisdiction over the case on appeal is authorized to issue all necessary and appropriate process to postpone the effective date of any action by the Commission or take such action as may be necessary to preserve status or rights of any of the parties pending conclusion of the proceedings on appeal. The court may require the applicant for such stay to post adequate bond as required by the court. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 8; 1983, c. 526, s. 8.)

Cross References. — As to jurisdiction of the Supreme Court to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission, see N.C. Const., Art. IV, § 12(1).

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to final orders of the Utilities Commission entered on or after that date, substituted "appellate court with jurisdiction over the case on appeal" for "Court of Appeals."

§ 62-96. Appeal to Supreme Court.

Appeals of final orders of the Utilities Commission to the Supreme Court are governed by Article 5 of General Statutes Chapter 7A. In all appeals filed in the Court of Appeals, any party may file a motion for discretionary review in the Supreme Court pursuant to G.S. 7A-31. If the Commission is the appealing party, it is not required to give any undertaking or make any deposit to assure payment of the cost of the appeal, and the court may advance the cause on its docket. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 3; 1983, c. 526, s. 9.)

Cross References. — As to jurisdiction of the Supreme Court to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission, see N.C. Const., Art. IV, § 12(1).

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to final orders of the Utilities Commission entered on or after that date, rewrote this section.

ARTICLE 6.

The Utility Franchise.

§ 62-110.2. Electric service areas outside of municipalities.

CASE NOTES

A municipality is not, etc. —
In accord with original. See State ex rel. Utilities Comm'n v. VEPCO, — N.C. App. —, 302 S.E.2d 642 (1983).

Designation of Municipility as "Electrical Supplier" Is Legislative Function. — It is for the Legislature, and not the court, to define "electric supplier" further than presently set out in subdivision (a)(3) of this section, if it intends that municipalities be so designated. State ex rel. Utilities Comm'n v. VEPCO, — N.C. App. —, 302 S.E.2d 642 (1983).

ARTICLE 7.

Rates of Public Utilities.

§ 62-132. Rates established under this Chapter deemed just and reasonable; remedy for collection of unjust or unreasonable rates.

CASE NOTES

One claiming, etc. —
The burden of showing the impropriety of rates established by the Commission lies with the party alleging such error. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

§ 62-133. How rates fixed.

CASE NOTES

I. IN GENERAL.

Section is not unconstitutional. Stimulation of the economy is an essential public and governmental purpose and the manner in which this purpose is to be accomplished is, within constitutional limits, exclusively a legislative decision. The authority to set rates to be charged by a public utility for its services rests in the legislature and is delegated by it to the Utilities Commission under sufficient rules and standards to guide the Commission in exercising this power. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

Purpose of Subsection (f). —
Subsection (f) is a mechanism whereby a natural gas utility may pass on to its customers supplier increases or decreases without going through the costly and protracted procedures of a general rate case. State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

Subsection (f) deals only with rate changes while § 62-136(c) specifically sets forth the criteria pursuant to which refunds should be distributed. State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

Section 62-136(c) more specifically applies to supplier refunds received by natural gas distributing utilities than does subsection (f) and is the proper statute to be applied in determining the appropriate distribution of these supplier refunds. State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

Applied in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., — N.C. —, 299 S.E.2d 763 (1983).

II. POWERS AND DUTIES OF THE UTILITIES COMMISSION, GENERALLY.

Court may not substitute its judgment, either with respect to factual disputes or policy disagreements, for that of the Commission. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

The Findings of the Commission, etc. — The Commission as factfinder, determines the credibility of the evidence, and its findings of fact which are supported by competent, material and substantial evidence, are conclusive, and the court is bound by them. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

When Commission's Orders Affirmed. — The rate order of the Commission will be affirmed if upon consideration of the whole record the court finds that the Commission's decision is not affected by error of law and the facts found by the Commission are supported by competent, material and substantial evidence, taking into account any contradictory evidence or evidence from which conflicting inferences could be drawn. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

III. FIXING OF RATES, GENERALLY.

Reduction of Future Rate Held Not Retroactive Rate Making. — An order which did not reduce revenue to compensate in the future for what may have been an excessive rate in the past, but reduced the future rate for what it found was a more realistic investment credit tax amortization, is not retroactive rate making. State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982).

IV. RATE BASE.

A. In General.

Only Reasonable Construction Work in Progress Expenditures Included. — The legislature mandates that the only expenditures for construction work in progress which can properly be included in rate base are reasonable expenditures. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

Including construction work in progress in rate base did not lessen rules and standards set by legislature. Reasonableness remains the standard. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

Evidence as to Construction Work in Progress. — To require the utility company to introduce evidence with respect to every item comprising construction work in progress would be an exercise in futility. The burden of proof would be unduly and unnecessarily burdensome and the rate-making process would become even more time consuming and difficult of administration. State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

VIII. OTHER FACTS.

B. Quality and Adequacy of Service.

Efficiency of Operations. — It is not only entirely appropriate but even necessary for the Commission to take into account the efficiency of the company's operations in fixing its rates in a general rate case as provided in this section. State ex rel. Utilities Comm'n v. Public Staff — North Carolina Util. Comm'n, 58 N.C. App. 453, 293 S.E.2d 888 (1982).

Poorly maintained equipment justifies a subtraction from both the original cost and the reproduction cost of existing plant before weighing these factors in ascertaining the present "fair value" rate base of the utility's properties as required by this section. Serious inadequacy of a utility company's service, whether due to poor maintenance of its equipment or to other causes, is one of the facts which the Commission is required to take into account in determining what is a reasonable rate to be charged by the particular utility company for the service it proposes to render. State ex rel. Utilities Comm'n v. Public Staff — North Carolina Util. Comm'n, 58 N.C. App. 453, 293 S.E.2d 888 (1982).

Fuel Costs. — The requirement, for general rate cases, of an inquiry into the reasonableness of costs incurred extends to fuel costs incurred by the utility. State ex rel. Utilities Comm'n v. Public Staff — North Carolina Util. Comm'n, 58 N.C. App. 480, 293 S.E.2d 880, cert. granted, 306 N.C. 751, 295 S.E.2d 486 (1982).

§ 62-136. Investigation of existing rates; changing unreasonable rates; certain refunds to be distributed to customers.

CASE NOTES

Under the 1981 amendment, the Commission is empowered to order the distribution of supplier refunds to either current or past customers, utilizing whatever method the Commission deems most appropriate. State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

Under the 1981 amendment to subsection (c), it is no longer required that the refund be practicable and that the utility have a reasonable return exclusive of the refund in order for the Commission to direct a customer refund. Moreover, the statute no longer provides for distribution of the refunds to customers in proportion to their payment of the charges refunded. State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

Prior to the 1981 amendment, the legislature intended for the refunds to be made in proportion to each customer's usage in the refund period during which he paid excess charges. There was no language in the statute requiring distribution by customer class. State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

Prior to the 1981 amendment, subsection (c) of this section required that refunds be distributed only to those individuals who actually paid the overcharges. State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

All refunds received after May 28, 1981, will be governed by the 1981 amendment to subsection (c); 1981 Session Laws, c. 460, s. 1. State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

Subsection (c) speaks in terms of when the refund is received by the utilities, not to the period of time to which the refunds relate. State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

Subsection (c) of this section more specifically applies to supplier refunds received by natural gas distributing utilities than does § 62-133(f) and is the proper statute to be applied in determining the appropriate distribution of these supplier refunds. State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

Distribution of refunds received by a utility after the effective date of the statute (January 1, 1964) are governed by subsection (c). State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

Section 62-133(f) deals only with rate changes while subsection (c) of this section, however, specifically sets forth the criteria pursuant to which refunds should be distributed. State ex rel. Utilities Comm'n v. Public Serv. Co., — N.C. —, 299 S.E.2d 425 (1983).

Applied in State ex rel. Utilities Comm'n v. Public Serv. Co., 59 N.C. App. 448, 297 S.E.2d 119 (1982).

§ 62-137. Scope of rate case.

CASE NOTES

Applied in State ex rel. Utilities Comm'n v. North Carolina Textile Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

§ 62-140. Discrimination prohibited.

CASE NOTES

Classifications of customers and differences in rates must be based on reasonable differences in conditions, and the variance in charges must bear a reasonable proportion to the variance in conditions. State ex rel. Utilities Comm'n v. North Carolina Textile

Mfrs. Ass'n, 59 N.C. App. 240, 296 S.E.2d 487 (1982).

§ 62-153. Contracts of public utilities with certain companies and for services.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

ARTICLE 12.

Motor Carriers.

§ 62-262. Applications and hearings.

CASE NOTES

I. IN GENERAL.

Applied in State ex rel. Utilities Comm'n v. Pony Express Courier Corp., 58 N.C. App. 218, 292 S.E.2d 769 (1982).

§ 62-281. Safety regulations applicable to motor carrier and private carrier vehicles.

The Commissioner of Motor Vehicles may promulgate highway safety rules and regulations for all for-hire motor carrier vehicles and all private carrier vehicles engaged in interstate commerce and intrastate commerce over the highways of North Carolina whether common carriers, contract carriers, exempt carriers, or private carriers. (1969, c. 722, s. 1; 1971, c. 586; 1981, c. 704, s. 21; 1983, c. 761, s. 138.)

Editor's Note. — Session Laws 1983, c. 761, s. 259, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, rewrote this section. The act also amended the section catchline.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1983

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1983 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina

STATE LIBRARY OF NORTH CAROLINA
3 3091 00829 6071